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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1978

NO. 78-523

WILLIE BAILEY, et al.,

Appellants,

v.

J. CLAYTON HARGROVE, etc., et al.,

Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

APPELLANTS' REPLY TO APPELLEES' MOTION TO DISMISS AND/OR AFFIRM

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ATTORNEYS FOR APPELLANTS

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I. GEORGIA LAWS 1962, P. 776 WAS NOT UTILIZED PRIOR TO NOVEMBER 3, 1964 AND THE RULING OF THE DISTRICT COURT IS NOT TO THE CONTRARY.

The district court ruling that Georgia Laws 1962, p. 776 was not covered by the Voting Rights Act of 1965 was

premised on the speculation, drawn by inference, that if the general election had been held on November 1, 1964, the local act at issue would have been employed. (Apppellees' Appendix, pp. 7a-8a). Appellees' main argument in their Motion to Dismiss and/or Affirm is not the reasoning adopted by the district court, but the contention that Georgia Laws 1962, p. 776 was utilized prior to November 1, 1964. To support this argument, Appellees claim that Georgia Laws 1962, p. 776 was utilized: (1) when candidates for the Board of Education qualified in January and February, 1964 for a primary election; (2) when a primary election and primary election runoff were held in March, 1964; and (3) when candidates qualified in September, 1964 for the November 3, 1964 general election.[1]

1. In their memorandum in support of proposed order of Defendant Putnam County Board of Education, p. 1, Appellees before the district court claimed that a primary election for members of the Board of Education was held in March, 1964. However, Appellees did not argue below that the holding of this primary election constituted a utilization of Georgia Laws 1962, p. 776. Furthermore, Appellees make no mention of candidate qualification procedures for primary or general elections before the district court and did not argue below that such activities constituted utilizations of Georgia Laws 1962, p. 776.

(Appellees' Motion to Dismiss and/or Affirm, pp. 7-8, 10).

A. Georgia Laws 1962, p. 776 Did Not Provide for and Was Not Utilized in the Holding of Primary Elections or in Candidate Qualification.

Appellees are incorrect in claiming that Georgia Laws 1962, p. 776 was utilized in the holding of primary elections or in candidate qualification. A reading of the local act shows that it does not mention either procedure. Regarding the election for members of the Board of Education, Georgia Laws 1962, p. 776 provided only for the holding of the general election.

Appellees contend that the procedures for candidate qualification in 1964 for both the primary and general elections were provided by Georgia Laws 1922, pp. 98, 100. (Appellees' Motion to Dismiss and/or Affirm, p. 10). Therefore, Georgia Laws 1962, p. 776 was not utilized when primary elections were held in 1964 or when candidates qualified in 1964 for the primary and

general elections. Instead, Georgia Laws 1962, p. 776, which provided for the popular election of Board members for the first time on November 3, 1964, in effect triggered pre-existing statewide statutes that provided the procedures for candidate qualification and primary elections in all countywide races.

The election change at issue here, i.e., alteration from appointment to at-large election of local officials used for the first time on November 3, 1964, is manifestly the type of change Congress intended to subject to §5 scrutiny. This Court has repeatedly held that §5 is to be given "the broadest possible scope." Allen v. State Board of Elections, 393 U.S. 544, 567 (1969). Accord: Dougherty Cty., Ga. Bd. of Ed. v. White, ___U.S.___, 99 S.Ct. 368, 372 (1978).

It is submitted that it would be an unwarranted restriction upon the reach of §5 for an otherwise covered election change to be removed from the coverage of the Act on grounds that the election change in effect triggered other actions, pursuant to existing statewide statutes, which occurred prior to November 1, 1964. Therefore, Appellees' contention must fail.

B. The District Court Did Not Find that Georgia Laws 1962, p. 776 Was Utilized Prior to November 3, 1964.

The district court's ruling that Georgia Laws 1962, p. 776 was not covered by §5 was not premised on the theory that Georgia Laws 1962, p. 776 was utilized prior to November 1, 1964. A reading of the opinion shows that the district court did not mention the procedures for candidate qualification or the holding of primary elections. The fact that the district court characterized the November, 1964 general election as the "first election under the Act" (Appellees' Appendix, pp. 2a, 3a, 7a) clearly demonstrates that it did not view primary elections in March, 1964 to have utilized Georgia Laws 1962, p. 776.

Appellees attempt to make the district court opinion conform to their arguments on appeal in two ways. First, they state (Appellees' Motion to Dismiss and/or Affirm, p. 8) that the district court found the local act was not subject to §5 "by having been enacted, ratified and utilized prior to November 1, 1964."

(emphasis added). This contention is simply incorrect. Nowhere in its opinion did the district court find that Georgia Laws 1962, p. 776 was utilized prior to November 1, 1964.

Second, Appellees place "[sic; third]" at the three points in the district court opinion where the court referred to the November, 1964 general election as the "first election." (Appellees' Appendix, pp. 2a, 3a, 7a). It is submitted that this characterization by the district court was not in error, but in any event the district court meant what it said.[1]

CONCLUSION

For the foregoing reasons, Appellees' contention that Georgia Laws 1962, p. 776 was utilized prior to November 1, 1964, and therefore not within the coverage of §5 of the Voting Rights Act of 1965, is without merit.

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1. Moreover, the use of "[sic]" in this manner is inappropriate.

Respectfully submitted,

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